

Service Date: April 20, 1995

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER Of The PSC's Investigation)	UTILITY DIVISION
of the Regulatory Status of Other Common)	DOCKET NO. 94.2.8
Carriers and Contemplated Rulemaking.)	ORDER NO. 5778f

ERRATA SHEET

Order No. 5778f in this Docket was issued April 14, 1995. The last line of Order No. 5778f indicates an incorrect Commission vote tally. The last line of Order No. 5778f should read: "Done and Dated this 10th day of April, 1995 by a vote of 4-1." The signature page should register the dissent of Commissioner Rowe. Please replace pages 3-4 of Order No. 5778f with the attached pages.

jurisdiction over the Montana operations of the above-listed companies pursuant to Title 69, Chapter 3, MCA.

ORDER

THEREFORE, THE MONTANA PUBLIC SERVICE COMMISSION ORDERS THAT:

1. The introduction of new services by any of the entities listed above is to be handled the same as price increases and decreases set forth in Order No. 5778d; that is, all filings for price changes and new service introductions become effective seven days after filing, unless challenged.
2. In addition to the filing of price lists with the Commission, AT&T and the OCCs listed above shall concurrently provide notice to all other IXC's set forth above.
3. This order modifies Order No. 5778d dated December 21, 1994, *nunc pro tunc*. Notice of price changes and new service introductions after December 21, 1994, which have not been provided by any IXC to all others listed in this order shall be given within ten days.

DONE AND DATED this 10th day of April, 1995 by a vote of 4-1.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

NANCY MCCAFFREE, Chair

DAVE FISHER, Vice Chair

BOB ANDERSON, Commissioner

DANNY OBERG, Commissioner

BOB ROWE, Commissioner
(Voting to Dissent)

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See ARM 38.2.4806.

DISSENT OF COMMISSIONER ROWE
DOCKET NO. 94.2.8, ORDER NO. 5778f (ERRATA SHEET)

The Commission's "Order Nunc Pro Tunc" makes a bad decision just a little bit worse. As my dissent to the original order makes clear, evidence in this docket (much of it generated by the Commission's own discovery) establishes that most intrastate long distance service is not effectively competitive. AT&T still possesses significant monopoly power. Allowing the market-dominant carrier to exercise that power unchecked both harms customers and retards the development of effective competition which would eventually benefit customers.

An order "nunc pro tunc" (now for then) is appropriate to correct a clerical error or omission which occurred through inadvertence or mistake. See, Mallory v. Ward Baking Co., 270 Mich. 94, 258 N.W. 414 (1935).¹ There was no inadvertence or mistake in this case. TRI proposed to allow price list changes on seven days' notice. The proposal did not extend to new service offerings. The Commission did not discuss and did not contemplate provision of new services through the same abbreviated procedure used for price list changes. The Commission should not now act "nunc pro tunc" in response to informal correspondence from AT&T.

While the Commission has already eviscerated the most meaningful protection for long distance telephone customers (mandatory flow through of carrier access charge reductions to lower prices to end use customers), it had not yet completely abandoned its responsibility to examine new service offerings. It will now be virtually impossible for the Commission to conduct any prospective review of new service offerings. Because new products and product changes in non-price terms are typically planned well more than one week in advance of their public offering, a longer lead time

¹ An order nunc pro tunc is not to supply omitted action by the court, but rather to supply an omission in the record of action which was really taken but was omitted through mistake or inadvertence. A court could not add a minor claimant to an action years after the original proceeding.

does not impose significant burdens, especially for a market-dominant carrier. The market-dominant carrier could, however, use short-notice product introductions or changes as a vehicle for anti-competitive practices, thereby further strengthening its market dominance.

The Commission's current action is trivial in comparison to its original order. However, it does make a bad outcome marginally worse.

RESPECTFULLY SUBMITTED this 20th day of April, 1995.

BOB ROWE